

A Personal Perspective

Lawrence v. Texas Changes the Landscape of LGBT Civil Rights

By William M. Hohengarten

In May last year, Ruth Harlow, who was then Legal Director of Lambda Legal Defense and Education Fund, called me to ask for help on a major case. Ruth and I had worked together before, and I had recently told her that we at Jenner were eager to do more pro bono work with Lambda. She had said she was saving “something big” for us. I had no idea how big.

I found out when Ruth called me that May day. She said that Lambda wanted advice in seeking Supreme Court review in *Lawrence v. Texas*, a federal constitutional challenge to the Texas sodomy law. Could we help out? I immediately said yes. I knew that my colleagues at Jenner, gay and straight, would react the same way. We all share a strong commitment to pro bono work in support of civil rights. And it was immediately clear that *Lawrence* could become a landmark. This was the opportunity of a lifetime

to contribute to real and positive change through legal advocacy. So I quickly assembled a team of top-notch attorneys,

due process”) challenge? We did not have to raise that issue.

Unlike the Georgia law upheld in *Bowers*, which on its face applied to both same-sex and opposite-sex couples, Texas sodomy law applied to sexual intimacy only between same-sex couples, while leaving opposite-sex couples free to engage in identical forms of intimacy. We could therefore challenge the Texas law on equal protection grounds, building on the Court’s decision in *Romer v. Evans*, without asking the Court to take the unusual step of overruling *Bowers*. And if we did seek reconsideration of *Bowers*, there was always the risk that it would be reaffirmed. So there was a strong case to be made for limiting our challenge to the equal protection issue, especially to win the votes of “swing” Justices known for deciding cases on narrow grounds.

Nonetheless, without hesitation, I counseled bringing all claims before the Court, including a direct challenge to overrule *Bowers*. Why? Several reasons. Different Justices might favor different routes to a ruling in our favor, but if we did not include a fundamental rights claim in the questions presented at the cert stage, that route could be closed off, perhaps costing us a majority. The fundamental rights claim also provided the best framework for emphasizing the uniquely important interests threatened by sodomy laws, especially the fundamental interests in our intimate relationships with our chosen partners – our homes and families. Based on my reading of the Court’s

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Pictured left to right: Partner William M. Hohengarten, Ruth Harlow of Lambda Legal Defense Fund and Partner Paul M. Smith following the victory in *Lawrence v. Texas*.

which ultimately included Associates Dan Mach, David Belt, Nicole Berner, and Sharon McGowan, plus an extremely talented crew of summer associates from Columbia, Harvard, Stanford, and Yale: Lindsay Harrison, Bernie Meyler, Luke Platzer, Julie Suk, Lee Taylor, and Scott Wilkins. And, of course, I tapped openly gay Jenner & Block Partner and Supreme Court veteran Paul Smith, one of the leaders of the Firm’s preeminent Supreme Court and appellate practice.

One of the first issues we had to tackle was deciding which claims to pursue before the Court. Should we ask the Court to reconsider and overrule *Bowers v. Hardwick*, in which it had upheld Georgia’s sodomy law against a fundamental rights (or “substantive

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More Reflections from the Team in *Lawrence v. Texas*

While Bill Hohengarten served as the lead attorney on the Jenner & Block *Lawrence* team (See page 1 for his insights), his teammates also had many compelling memories to share.

Paul M. Smith Partner

"I cannot imagine a greater opportunity for a lawyer than the chance that came our way to work on the *Lawrence* case. It was a case in which history could be (and was) made. It was also a case in which the basic interests of millions of Americans were at stake. Prior to *Lawrence*, gay men and lesbians in this country were second-class citizens not only in those states that still chose to outlaw sodomy but everywhere, as a result of the decision of the Supreme Court in *Bowers v. Hardwick* saying that there is nothing constitutionally questionable about criminalizing the couples who choose to form a same-sex relationship founded on sexual intimacy. As long as that ruling was in place, almost any other form of discrimination based on sexual orientation could be justified.



Team members (left to right) Susan Sommer, Patricia M. Logue and Ruth Harlow of Lambda Legal, John Geddes Lawrence, Partner Paul M. Smith and Partner William M. Hohengarten.

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It was a proud, although scary, moment when I stood up before nine Justices to talk about what was at stake. The room, after all, was filled with people who had been waiting for hours to get in and had been waiting for years to see the day when the Supreme Court might recognize how far astray it went in *Bowers*. The tension was palpable. It was also a great moment three months later when we heard the Court say that *Bowers* was wrong when it was decided, it is wrong now, and it needs to be overruled.

I also cannot imagine a better firm than Jenner & Block to take on such a significant but potentially controversial case. We formed a great team, led by Bill Hohengarten, to partner with the excellent and experienced lawyers from Lambda Legal in the brief writing and in the interminable argument preparation for yours truly. And we had the strong backing of the Firm every step of the way. When we won, it was a great pleasure to receive literally dozens of e-mails from Jenner & Block colleagues saying how proud they were of the Firm for taking on this fight."

"...a sweeping declaration of constitutional liberty for gay men and lesbians"

- THE NEW YORK TIMES

"The Court's decision could be among the most significant civil rights rulings in years..."

- CHICAGO TRIBUNE

Firm Hosts Pre-Decision Executive Briefing

Jenner & Block hosted an executive briefing on *Lawrence v. Texas*, a week before the much anticipated gay civil rights decision was handed down by the U.S. Supreme Court.

Partner Paul M. Smith, who argued the case before the Court on March 26, and Patricia M. Logue, now Interim Legal Director for Lambda Legal in Chicago, who worked on the briefs and case strategy, shared their experiences with the case.

Ms. Logue, a Jenner & Block alumna, discussed the historical context of the *Lawrence* case and its relevance to gay civil rights and how Lambda was able to position the case for hearing by the Court. Mr. Smith recounted the Firm's partnership with Lambda in bringing the case, and his oral argument before the Court discussing the significant aspects of the argument and the Justices' questioning.



Partner Paul M. Smith reviews a key legal brief with Lambda Legal Chicago's Patricia M. Logue.

Daniel Mach

Associate

"I vividly remember calling Bill Hohengarten to offer my assistance as soon as I learned that Jenner & Block would be involved in litigation seeking to overturn *Bowers v. Hardwick*. At first blush it seemed like a long-shot, as with most *certiorari* petitions. Thirteen months later, I couldn't believe I was sitting in the Supreme Court, listening to Justice Kennedy announce that '*Bowers* was not correct when it was decided, and it is not correct today.' That moment, and the entire experience of working on *Lawrence* — likely the most important case decided in my lifetime — will stay with me forever."

Nicole G. Berner

Associate

"Being present in the Court when Justice Kennedy read aloud the historic decision in *Lawrence* was a high point of my life both professionally and personally. The power and breadth of that decision exceeded even our most optimistic expectations. I literally wept as it was read, realizing the profound impact of this decision on my own life and family.

My partner Ruti and I have three children, and were recently married under Canadian law. Thus, I have always experienced the language of *Bowers* about there being 'no connection between family, marriage, and procreation' and 'homosexual activity' as a personal affront. Justice Kennedy's discussion of *Bowers* felt like an apology from the Court."



Ruth Harlow of Lambda Legal and Jenner & Block Partner Paul M. Smith face the media outside the U.S. Supreme Court after the oral arguments in March.

"Destined to be a landmark of the decade if not the century"

- LEGAL TIMES

"Best oral argument:

Paul M. Smith"

- LOS ANGELES DAILY RECORD

"Advocates for equal rights for gays were elated after the argument..."

- LOS ANGELES TIMES

"Emotionally charged case is of enormous importance to gays and lesbians..."

- CHICAGO TRIBUNE

David C. Belt

Associate

"There is no Supreme Court decision that I wanted to see overruled more than *Bowers v. Hardwick*, a case that for many had come to symbolize our country's endorsement of discrimination against gay men and lesbians, or at least its indifference to such discrimination. I expected (or at least hoped) merely to live to see the day in which *Bowers* was no more. I did not expect that day to arrive in 2003, and I certainly never dreamed that I would have the opportunity to work on the case that would bring about its demise."

Sharon M. McGowan

Former Associate

"Just as *Brown v. Board of Education* marked the end of one chapter and the beginning of another filled with greater hope and promise, so too will *Lawrence v. Texas*. At every LGBT event I have attended since *Lawrence* was decided, I have sensed something different in the air — whether it is happiness, relief or simply a renewed sense of self-worth — even from those who have been out and proud for years!

I never could have imagined, however, that I would have the opportunity, especially so early in my legal career, to assist with the case that wiped *Bowers v. Hardwick* from the books.

I will always remember standing on the steps of the Court with my Jenner & Block colleagues hugging and laughing and crying with joy that the day we had so longed and worked for — the reversal and outright rejection of *Bowers* — had finally come."

Romeo & Juliet Law Challenged in Kansas Court

Matthew Limon got his second chance when the U.S. Supreme Court in *Lawrence v. Texas* struck down the Texas sodomy law this summer. The Justices had held that the Texas law was an unconstitutional violation of two gay men's right to privacy.

Earlier, in *Limon v. Kansas*, the Kansas Court of Appeals had affirmed a 17-year prison sentence for Matthew Limon, a gay adolescent, for engaging in consensual sex with another adolescent boy. Jenner & Block attorneys became involved in this case by filing important legal briefs with the Court that challenged the constitutionality of the state law on equal protection grounds.

Shortly after its landmark decision in *Lawrence*, however, the U.S. Supreme Court remanded the *Limon* case to the Kansas appeals court for reconsideration in light of *Lawrence*.

Both young men in *Limon* were residents of a group home for developmentally disabled boys. Matthew had turned eighteen years old only one week prior to being caught having sex with another young man who was just shy of his fifteenth birthday.

Because Matthew was legally an adult, he was charged and convicted under the Kansas Criminal Sodomy law, which makes it a crime for an adult to have oral or anal sex with an adolescent between 14 and 16 years of age, regardless of whether the sex is consensual.

If either Matthew or the other boy had been a female, rather than being

charged with criminal sodomy, Matthew would have instead been charged under the more lenient Kansas Unlawful Voluntary Sexual Relations statute, colloquially referred to as the "Romeo and Juliet" law. The Romeo and Juliet law carves out an exception to the Kansas Criminal Sodomy law when an adolescent who is less than 19 years old engages in consensual oral or anal sex with another adolescent who is less

"With . . . Lawrence, the Kansas Court of Appeals must now . . . face head on the discriminatory nature of the Kansas Law."

than four years younger, but only when the two consenting adolescents are members of the opposite sex.

If Matthew had been convicted under this law he would have received a dramatically lighter punishment. Thus, by its terms, the same behavior is subject to a greater punishment when performed by members of the same sex, than when performed by members of opposite sexes.

Partner **Julie M. Carpenter** and Associate **Nicole G. Berner**, both in the DC office, filed an *amicus* brief on behalf of the DKT Liberty Project in support of Matthew's first appeal before the Kansas Court of Appeals, and filed another *amicus* brief in the rehearing. In their brief, they argue that the Romeo

and Juliet law violates the Equal Protection clauses of the United States and Kansas Constitutions because it discriminates on the basis of gender.

In the brief they state "The facts in this case vividly demonstrate the harsh consequences of this gender-based distinction. If appellant Matthew Limon had been a female engaging in consensual sexual activity with an adolescent boy in the group home, he would have received a maximum sentence of only 15 months in prison. Instead, simply because he is male, Mr. Limon was sentenced to over 17 years in prison."

According to Ms. Berner, "Although this is an equal protection challenge, the Kansas Court of Appeals based its original decision almost exclusively on *Bowers v. Hardwick*, a case that concerned the right to privacy, not equal protection. *Limon* was a classic example of the collateral effects of the terrible decision in *Bowers*. With *Bowers* overturned by *Lawrence*, the Kansas Court of Appeals must now revisit its ruling and face head on the discriminatory nature of the Kansas law."

"Although this is not a privacy challenge, the equal protection language of the majority decision in *Lawrence*, as well as the strong concurrence by Justice O'Connor finding that the Texas law violates the Equal Protection Clause, should both go far to persuade the Kansas Court of Appeals that the Romeo and Juliet law violates Matthew's right to equal protection of the laws," she concluded.

Partner Paul Smith Receives HRC's Equality Award

Paul M. Smith, Managing Partner of the Firm's Washington, DC office, received the Equality Award by the Human Rights Campaign, the nation's largest lesbian and gay political organization, in a July 26 awards ceremony in San Francisco. Mr. Smith argued the petitioners cause in

Lawrence v. Texas, a June 26 U.S. Supreme Court decision that struck down a Texas anti-sodomy law. Nearly 1000 HRC members and supporters of lesbian and gay civil rights attended the ceremony, which also featured a keynote address by Senator John Kerry.



Lawrence Victory

Continued from page 1

privacy cases, I also believed that a majority on the Court might well be ready to overrule *Bowers*.

But my recommendation to challenge *Bowers* head-on did not just reflect lawyerly strategy. It also sprang from deeper grounds. I first read *Bowers* when I was a 1-L at Yale in 1991. The case had been decided five years earlier, in 1986, when I was graduate student studying philosophy. I was, of course, aware of *Bowers* back in 1986, but I didn't read the Court's opinion at that time, and I had assumed that the ruling probably reflected a narrow understanding of unenumerated constitutional rights more than rank anti-gay prejudice.

So when I finally read *Bowers* when I got to law school, I was stunned. Justice White's majority opinion and Chief Justice Burger's concurrence was openly hostile toward gay people. Our claim to the same constitutional rights as straight Americans was rejected as "facetious." Our very relationships and families were simply dismissed as non-existent. To gay and lesbian Americans, *Bowers* stated in no uncertain terms that we were second-class citizens.

Thus, from the moment I read *Bowers* in 1991, I looked forward to the day when it would be erased from the books. *Lawrence* provided a rare opportunity to achieve that goal. The Lambda team also thought we should not let this opportunity pass, so we sought review from the Court on both equal protection and fundamental rights grounds. And we emphasized the challenge to *Bowers* by formulating a third Question Presented in our cert petition, which succinctly asked "Whether *Bowers v. Hardwick*, 478 U.S. 186 (1986), should be overruled?"

Having decided to attack the Texas law as infringing both equal protection and fundamental rights, it came time to write the cert petition and reply and, later, the briefs on the merits. The legal

team at Lambda had a lot of experience litigating gay rights cases on equal protection grounds, including the rational basis approach of *Romer v. Evans*, and they had also worked on many cases involving parental, First Amendment, and other fundamental rights. But because no lower court could overrule *Bowers*, Lambda had not fully briefed a federal fundamental rights challenge to a sodomy law in recent years. For my part, I have had a special interest in fundamental rights theories ever since law school. While

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still a student, I had written a Note for the *Yale Law Journal* on same-sex marriage and the right of privacy, and one of the Court's major fundamental rights precedents, *Washington v. Glucksberg*, was also decided the Term I was a law clerk for Justice Souter.

Thus, after Lambda worked up a fantastic first draft on fundamental rights for the cert petition, we at Jenner focused on deepening and expanding that part of the argument – both at the cert stage and as the case moved forward to the merits – while Lambda concentrated more on equal protection drafting. Then the Lambda and Jenner teams worked together in an intensive process of editing and refining every part of every filing in the case, taking advantage of Lambda's expertise in appellate gay rights law and our Firm's constitutional and Supreme Court experience. This was truly a collaborative effort, and I think the quality of our petition and briefs shows how well it worked.

Most readers have probably read accounts of the oral argument. Paul Smith's presentation was simply brilliant. On the other side, the Harris County District Attorney who argued in support of the law was out of his league, resulting, as Linda Greenhouse put it in *The New York Times*, in a "rare mismatch of advocates." The argument was extremely encouraging. But the two critical "swing" votes, Justices O'Connor and Kennedy, were uncharacteristically quiet.

Thus, as we awaited the Court's decision at the end of June, there was every reason to be optimistic – but no certain basis for predicting what the Court would do. Knowing that history was being written, our team went to the Court for the last three sessions of the Term when the Court announces opinions. Given how much we had poured into this case, and the critical importance of the outcome, the wait was excruciating.

The last day of the Term came – *Lawrence* had to come down that day. I could hardly sleep the night before, and my heart pounded just waiting in the courtroom. Finally, after Justice Breyer had announced an opinion in another case, the Chief Justice intoned: "The opinion of the Court in Number 02-102, *Lawrence v. Texas*, will be announced by Justice Kennedy." A collective sigh was heard; this was just what we had hoped—would our hopes be vindicated? Justice Kennedy then started to read his opinion, its broad sweep slowly unfolding before those of us gathered in the courtroom.

This was the very opposite of *Bowers* – a respectful affirmation of the worth and dignity of gay men and lesbians and their relationships. And for the second time in my legal career, I was moved to tears by an opinion of the Court about sodomy laws. But this time, unlike when I read *Bowers*, I was shedding tears of joy.

Meet Jenner & Block's Openly Lesbian and Gay Attorneys

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Mr. Dickinson also counsels corporate policyholders in dealings with their insurers outside the dispute resolution context, for example, in claims review and management; review of insurance programs and counseling concerning the design of new programs; and crafting policy language.

Mr. Dickinson is a member of the Board of Directors of the AIDS Legal Council of Chicago.

Mr. Dickinson graduated with distinction from the University of Wisconsin – Madison in 1982, and received his law degree *cum laude* from the University of Wisconsin in 1988. He is admitted to practice in Illinois and Wisconsin, and in several federal trial and appellate courts, including the trial bar of the federal district court in Chicago.



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William M. Hohengarten is a member of the Firm's Antitrust and Trade Regulation, Appellate and Supreme Court,

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Mr. Hohengarten maintains an active general litigation practice. He has advised and represented clients in a variety of antitrust and commercial disputes and litigation, including matters under the Sherman Act, the Robinson-Patman Act, and commercial contract, fraud, trade secrets, business torts, and dealer termination litigation. In addition, Mr. Hohengarten has an active appellate and Supreme Court litigation practice, focusing

on regulatory appeals, commercial matters, and civil rights and constitutional law.

In the regulatory area, Mr. Hohengarten has represented clients in judicial review proceedings of agency decisions regarding interconnection arrangements between telecommunications carriers, universal service obligations, license revocations, constitutional limitations on ratemaking, and numerous other matters. In commercial appeals, he has represented clients in contract, fraud, and business tort cases.

He has also represented parties and *amici curiae* in appeals presenting a wide variety of constitutional issues, including sovereign immunity, takings of private property, the census and congressional representation, procedural due process, the death penalty, and the right of privacy. The U.S. Court of Appeals for the District of Columbia Circuit appointed Mr. Hohengarten to present arguments as friend of the court in an appeal raising novel questions concerning freedom of religion and qualified immunity.

Mr. Hohengarten received a B.A. in History in 1984 from Reed College, a Ph.D. in Philosophy in 1991 from Northwestern University, and a J.D. in 1994 from Yale Law School, where he was a Notes Editor for the *Yale Law Journal*. Mr. Hohengarten was also selected as a Fulbright Scholar at the Free University Berlin in 1984-1985.

Mr. Hohengarten served as a law clerk to Justice David H. Souter of the United States Supreme Court in 1996-1997, and to Chief Judge Jon O. Newman of the U.S. Court of Appeals for the Second Circuit in 1994-1995. He is admitted to practice in the District of Columbia and New York, as well as a number of federal courts.



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Gail H. Morse is a member of the Firm's Tax Practice, heads its State and Local Tax Practice and is Co-Chair of the Firm's Tax Controversy Practice. Ms. Morse also serves on the Firm's Diversity and Pro Bono Committees.

In her practice, Ms. Morse counsels multinational and multistate businesses, private and publicly held businesses, tax-exempt entities and individuals on federal, state and local tax matters. She helps clients formulate and implement strategies to minimize tax exposure including state franchise, income, sales, use, gross receipts and personal and real property taxes. Ms. Morse counsels clients on the tax aspects involved in business acquisitions, mergers and dispositions, and the day to day operations of business.

Ms. Morse also advises clients on related matters such as unclaimed property reporting, tax amnesty programs, voluntary disclosures, and identifying state tax credit and incentive

opportunities. Ms. Morse frequently represents clients before the IRS and state tax administrative agencies and tribunals, and also provides clients assistance in federal and state legislative and regulatory matters.

Ms. Morse began tax practice as an attorney advisor in the Internal Revenue Service's Office of Chief Counsel in the Legislation and Regulations Division, after receiving her J.D. from the University of San Diego School of Law with honors in 1982. She was a member of the *San Diego Law Review* from 1980-1982. Ms. Morse earned her bachelor of business administration with honors from the University of San Diego in 1979, and her Masters of Law in Taxation from the Georgetown University Law Center in 1986. Ms. Morse is a member of the state bars of California, Colorado, the District of Columbia and Illinois, as well as the United States Supreme Court, the United States Tax Court and numerous other federal district and appellate courts.

Ms. Morse is a member of the American Bar Association's and the Chicago Bar Association's state and local tax committees. She is active in the Women's Bar Association of Illinois, and WILPOWER, the political action committee of the Women's Bar Association of Illinois. Ms. Morse also serves on the boards of directors for the Women's Treatment Center and Vital Bridges, and is a commissioner on the Cook County Commission on Women's Issues.



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Susan Podolsky is a member of the Firm's Litigation Practice. Ms. Podolsky has a nationwide litigation practice and has litigated in federal courts around the country, including the District of Columbia, the Eastern and Western Districts of Virginia, the District of Maryland, the Northern District of Ohio, the Western District of Louisiana, the Middle and Southern Districts of Florida, and the Northern, Central and Southern Districts of California. Of these courts, Ms. Podolsky specializes in cases brought in the Eastern District of Virginia, which has become known as the "Rocket Docket," and has litigated in that district for over ten years.

Ms. Podolsky's practice ranges from litigating large, complex civil commercial cases to advising and counseling clients on internal matters. Her practice has included a variety of subject matters, including telecommunications, employment, contracts, and intellectual property. Ms. Podolsky's litigation experience includes cases for multi-billion dollar clients, on both the plaintiff and defendant sides, and she enjoys working with smaller clients as well.

Ms. Podolsky has counseled clients on various types of contractual claims and disputes such as those involving discrimination claims of all sorts, including race, gender, and religion. She has litigated these matters before numerous federal and state courts and agencies.

Ms. Podolsky is a 1986 graduate of the University of Virginia Law School and a 1981 graduate of Dartmouth College. She is a member of Phi Beta Kappa. She clerked for Albert V. Bryan, Jr., then-Chief Judge of the Eastern District of Virginia, from 1986-88.



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Paul M. Smith is the Managing Partner of Jenner & Block's Washington, DC office. Mr. Smith is also Co-Chair of the Firm's Appellate and Supreme Court, and Media and First Amendment Practices.

Mr. Smith has had an active Supreme Court practice for two decades, including oral arguments in nine Supreme Court cases. These arguments have included, most recently, *Lawrence v. Texas*, involving the constitutionality of the Texas sodomy statute, *United States v. American Library Ass'n*, involving a First Amendment challenge to the Children's Internet Protection Act and *Mathias v. WorldCom* (2001), dealing with the Eleventh Amendment immunity of state commissions. His first argument was in *Celotex Corp. v. Catrett* in 1986. Mr. Smith represented a group of congressional interveners in *Department of Commerce v. U.S. House of Representatives*, involving the constitutionality of "sampling" and the census. He also worked extensively on several other First Amendment cases in the Supreme Court, including *Rubin v. Coors* (1995), dealing with restrictions on beer labeling, *Reno v. ACLU* (1997), involving a challenge to content restrictions for the Internet in the Communications Decency Act, and *Masson v. New Yorker Magazine, Inc.* (1991), a significant defamation case.

Mr. Smith also represents various clients in trial and appellate cases involving commercial and telecommunications issues, the First Amendment, intellectual property, antitrust, and redistricting and voting rights, among other areas. His recent trial work has included several cases involving congressional redistricting as well as the trial in the *American Library Ass'n* case that ultimately went to the Supreme Court.

Before coming to Jenner & Block in 1994, Mr. Smith practiced for 13 years in Washington, DC with the firms of Onek, Klein & Farr and Klein, Farr, Smith & Taranto.

Mr. Smith graduated in 1976 from Amherst College and received a J.D. from *Yale Law School* in 1979, where he served as Editor-in-Chief of the *Yale Law Journal*. The following year, Mr. Smith was a law clerk to Judge James L. Oakes of the United States Court of Appeals for the Second Circuit. From 1980-81, Mr. Smith was a law clerk to Supreme Court Justice Lewis F. Powell, Jr.

Mr. Smith is a current member of the Board of Governors of the District of Columbia Bar. He is also a long-standing Board member of the Washington Council of Lawyers and served as President of that organization in 1990-91. Mr. Smith was a member of the Steering Committee of the DC Bar Litigation Section from 1998 to 2001 and is a Trustee of the Washington Lawyers Committee for Civil Rights and Urban Affairs.

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David W. Austin is a member of the Firm's Litigation Practice.

A former long-time resident of Italy, Mr. Austin received his B.A. from the University of Maryland's European Division in 1995. While in Europe, Mr. Austin was actively involved in the fight against AIDS. Between 1991 and 1995, he served on the board of the European Council of AIDS Service Organizations (EuroCASO), a network of non-governmental organizations promoting AIDS prevention and care in over 20 different countries.

While a student at The John Marshall Law School, Mr. Austin externed for the United States Attorney's Office, the Federal Election Commission, the City of Chicago's Corporation Counsel, the Midwest Immigrant and Human Rights Center, and the Chicago Lawyers' Committee for Civil Rights Under Law, Inc.

Mr. Austin obtained his J.D. from The John Marshall Law School in 2001, where he served as president of the Gay and Lesbian Legal Alliance and was a Staff Editor for *The John Marshall Law Review*.

In 2003, Mr. Austin completed a two-year clerkship with the Honorable Ronald T. Y. Moon, Chief Justice of the Supreme Court of Hawaii. Mr. Austin is a member of the Illinois bar.

Mr. Austin is a member several bar organizations, including the Lesbian and Gay Bar Association of Chicago (LAGBAC), and was appointed vice-chair of the Committee on Civil Rights of the Chicago Bar Association.

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Nicole G. Berner is a member of the Firm's Litigation and Insurance Litigation and Counseling, Arbitration: Domestic and

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Ms. Berner has been involved in the litigation of a wide range of cases in state and federal trial and appellate courts across the country. Ms. Berner is currently prosecuting a series of multi-million dollar copyright and securities fraud actions in the United States District Court for the District of Columbia. She recently participated in a month-long insurance coverage arbitration in London in which the Jenner & Block team obtained almost \$100 million for its client. Ms. Berner's other recent litigation experience includes a bench trial in Oklahoma State Court regarding Oklahoma's Congressional redistricting plan, a *Markman* hearing in a patent litigation, and a successful bid protest over a major government contract.

Ms. Berner's pro bono practice includes serving as a *guardian ad litem* for abused and neglected children in DC Superior Court. She is also a member of the Firm's Diversity Committee.

Ms. Berner served as a judicial law clerk to the Honorable Betty B. Fletcher of the United States Court of Appeals for the Ninth Circuit and to the Honorable Thelton H. Henderson Chief Judge of the United States District Court for the Northern District of California. Ms. Berner graduated Phi Beta Kappa in 1988 from the University of California at Berkeley, and graduated Order of the Coif in 1996 from Boalt Hall School of Law at the University of California Berkeley, where she completed concurrently a Master's Degree in Public Policy. She is a member of the California Bar (inactive) and the Bar Association of the District of Columbia, and has been admitted to several federal courts and the U.S. Supreme Court.

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Ms. Djordjevic is a member of the American Bar Association, the Illinois State Bar Association, and the Women's Bar Association of Illinois.

Ms. Djordjevic graduated from Grinnell College in 1996. She received her J.D., *summa cum laude*, from the University of Illinois College of Law in 2002, where she was elected to the Order of the Coif. While at the University of Illinois, Ms. Djordjevic was a Symposium Editor for the *University of Illinois Law Review*, and served two years as the President of the Sexual Orientation and Legal Issues Society.

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Kathleen R. Hartnett is a member of the Firm's Litigation Practice.

Ms. Hartnett's practice involves a variety of litigation matters, with a focus on administrative and constitutional law. She has assisted in the representation of MCI on several federal lawsuits concerning the implementation of the Telecommunications Act of 1996; she has worked on behalf of a software trade association in a First Amendment challenge to state laws restricting the sale and rental of computer and video games; and she has assisted in the representation of the recording industry in its defense against statutory and constitutional challenges to provisions of federal copyright law. Ms. Hartnett's pro bono projects have included representing a client in his appeal from a second-degree murder conviction, and securing the release of an INS detainee in the course of representing that client in federal *habeas corpus* proceedings.

Ms. Hartnett received an A.B. in Government, *magna cum laude*, from Harvard College in 1996. In 2000, she received her J.D., *magna cum laude*, from Harvard Law School, where she served as Treasurer of the *Harvard Law Review*.

In 2001-2002, Ms. Hartnett clerked for Justice John Paul Stevens of the United States Supreme Court, and in 2000-2001, she clerked for Judge Merrick B. Garland of the United States Court of Appeals for the District of Columbia Circuit.



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Bobby J. Hollis II is a member of the Firm's Corporate Practice.

Mr. Hollis' primary focus is on mergers and acquisitions, especially in the areas of new technology and government contracting, for Fortune 500, small and mid-size companies. He also assists clients with required filings to the Securities and Exchange Commission.

Mr. Hollis received his J.D. with high honors from the University of Iowa College of Law in 1999. He received his B.A. with honors from the University of Florida in 1996 and was inducted to Phi Beta Kappa the same year.



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Jorge M. Leon is a member of the Firm's Employee Benefits and Executive Compensation Practice.

Mr. Leon counsels clients on a wide range of issues relating to employee benefits and executive compensation, including the benefit aspects of corporate transactions, executive and equity compensation and qualified and non-qualified retirement plan issues. Recently, he has consulted on ERISA litigation issues, Taft-Hartley trusts and stock option plans for Internet and traditional companies. In addition, he counsels clients on a variety of Internal Revenue Code/ERISA compliance issues including fiduciary duties, minimum distribution requirements, qualified domestic relations orders and other plan qualification requirements. He also frequently counsels clients on the securities law and tax aspects of equity-based retirement and equity incentive plans.

Mr. Leon is a member of the Chicago Bar Association, the Illinois State Bar Association and the American Bar Association.

Mr. Leon graduated from the University of Illinois at Urbana-Champaign in 1995 and obtained his J.D., *magna cum laude*,

from the University of Illinois College of Law in 1998. Mr. Leon served as a notes and comments editor for the *University of Illinois Law Review*.



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Mr. Shaw received his J.D. from the University of Chicago in 2002, where he served as Articles Editor for *The Chicago Journal of International Law*. Mr. Shaw graduated, *magna cum laude*, from Williams College in 1997 with a B.A. in History. In 2000, Mr. Shaw served as Legal Intern and Jail Project Coordinator for Chicago Legal Advocacy for Incarcerated Mothers.



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Margaret J. Simpson is a member of the Firm's Antitrust and Trade Regulation Practice and its Litigation Practice.

Ms. Simpson concentrates her practice in antitrust and commercial litigation and antitrust counseling. Ms. Simpson has worked on a number of antitrust cases, including patent litigation with substantial antitrust issues and antitrust challenges to distribution arrangements.

Ms. Simpson received her B.A. from St. Olaf College in Minnesota, her M.S. and Ph.D. in economics from the University of Wisconsin-Madison, and her J.D., with honors, from the University of Chicago. She is a member of the ISBA and ABA sections of antitrust law and the American Economic Association.

Community Action

Firm attorneys have long supported efforts to serve the LGBT Community, and their contributions of time, legal assistance and funds have aided a wide variety of organizations. The following is a representative sampling.

AIDS Legal Council of Chicago

Partners **Christopher C. Dickinson** and **Sarah R. Marmor** serve on the Board of Directors of the AIDS Legal Council of Chicago, a widely respected, United Way-funded organization providing pro bono legal assistance and advocacy for those affected by AIDS and HIV. Mr. Dickinson also serves as a volunteer attorney for the organization. Partner **Gabrielle Sigel** was a Founding Director of the AIDS Legal Council of Chicago, and from 1988-1999 she served as Director and Officer.

American Bar Association's AIDS Coordinating Committee

In January, Partners **Barry Sullivan** and **Gabrielle Sigel** will participate for the second year in the American Bar Association's AIDS Coordinating Committee and AIDS Coordination Project three-day project, "HIV/AIDS Law and Practice: From 'Nuts & Bolts' to 'Cutting Edge.'" Mr. Sullivan served as Chair of the ABA's AIDS Coordinating Committee from 1988-1994, and Ms. Sigel served as Co-Chair of the Committee from 1998-2000.

"The Art of Uribe: A GLBT Networking Reception"

Jenner & Block sponsored "The Art of Uribe: A GLBT Networking Reception" on September 18 presented by Wells Fargo Private Client Services. The event was held at the prestigious Aldo Castillo Gallery in Chicago's River North gallery district and featured the works of Luis Fernando Uribe, one of the foremost Latin American visual artists working in Magic Realism.

Harris Bank LGBT Initiative Advisory Council

Partner **Gail H. Morse** serves on the Harris Private Bank LGBT Initiative Advisory Council.

Lambda Legal's Annual Bon Foster Award Dinner

Jenner & Block was honorably noted at this year's Lambda Legal Defense and Education Fund's Bon Foster Memorial Civil Rights Dinner on October 9. Partner **William M. Hohengarten** represented the Firm at the event.

The Bon Foster Dinner, celebrating Lambda Legal's 30th anniversary, honors the legacy of Chicago attorney and activist Robert Bonvouloir "Bon" Foster. Lambda Legal offered its gratitude to the Firm for its crucial role in the *Lawrence v. Texas* landmark victory.

Lavender Law 2003

Partner **Paul M. Smith** will give the keynote address at Lavender Law 2003, the annual conference hosted by the National Lesbian and Gay Law Association (NLGLA) and the National Lesbian and Gay Law Foundation (NLGLF). More than 500 practicing attorneys and law professors as well as 200 law students are expected to attend this year's event, held on October 17-19 at Fordham University in New York City.

Partner **Gail H. Morse** and Associate **Nicole G. Berner**, along with the Honorable Sid Galton, will also participate in the panel entitled, "Out on the Job." The panel teaches law students how to address concerns about being out as a professional attorney.

In addition, Associates **Bobby J. Hollis II** and **Jorge M. Leon** will represent Jenner & Block at the Lavender Law Career Fair. The Career Fair is a unique opportunity for conference participants to network with attorneys from firms across the country.

LGBT Panel at Harvard Law School

Partner **Gail H. Morse** participated in a panel discussion on issues facing LGBT attorneys being out in the private sector on September 22 at Harvard Law School. Associate **Jorge M. Leon** spoke at the event last year.

The Mautner Project's Annual Gala

Jenner & Block was proud to sponsor the Mautner Project's Annual Gala in September. Founded in 1990, the Mautner Project is the only national organization dedicated to lesbians with cancer, their partners, and caregivers. Associates **Nicole G. Berner** and **Kathleen R. Hartnett** hosted the Jenner & Block table.

Northern Trust Seminar Series

Partner **Gail H. Morse** participated in Northern Trust's Seminar Series addressing unique legal and financial issues affecting the LGBT Community.

Northwestern University Gay and Lesbian Alumni Association

Partner **William M. Hohengarten** participated in a panel discussion of *Lawrence v. Texas* at a May 7 symposium sponsored by the Northwestern University Gay and Lesbian Alumni Association.

Outgiving 2003

On September 19 in Braselton, GA, Partner **Gail H. Morse** participated in a panel discussion on "Techniques for Reducing Estate Taxes," at Outgiving 2003. The Gill Foundation's Annual Outgiving Conference is a strategic giving program designed to provide LGBT donors with the resources they need to become more strategic in their giving, ultimately improving the effectiveness of resources invested into the LGBT and allied communities.

Vital Bridges "Songs of the Season"

Jenner & Block was proud to sponsor "Songs of the Season," a brunch and Broadway benefit for Vital Bridges (formerly Open Hand Chicago) in December 2002. Vital Bridges serves people impacted by HIV and AIDS throughout metropolitan Chicago by providing prevention, case management, food, nutrition, housing, and related services through the efforts of a dedicated community of volunteers. The Firm will sponsor the event again this year.

Landmark Decision Improves Lives of Citizens

Much of the discussion in the aftermath of the Supreme Court's landmark decision in *Lawrence v. Texas* (see page 1) has focused on the importance of equal rights for LGBT citizens in theory. And yet, an often overlooked aspect of the decision is the practical and tangible changes that LGBT citizens everywhere might expect now that Texas' anti-sodomy law was ruled unconstitutional.

"*Lawrence* has revealed many pockets of resistance," to allowing gays and lesbians the same constitutional protections as other citizens, said **Patricia M. Logue**, Interim Legal Director, Lambda Legal Chicago, and a Jenner & Block alumna. "It's provided us with new opportunities to work toward equality in deed and in word."

Ms. Logue cited numerous examples of LGBT Americans whose lives were deeply affected by the prevalence and abuse of anti-sodomy laws in the pre-*Lawrence* era. "These laws were essentially used for the purpose of discrimination," she commented. For example, Ms. Logue told of a person in Texas that was rejected for a police

officer position because she was a lesbian. The police department claimed that, as a lesbian, she was presumed to be violating Texas' "Homosexual Conduct" law and was therefore unfit to serve as a police officer.

Another example Ms. Logue mentioned was a Mississippi case where a man's request for sole custody over one of his children from an earlier marriage was denied because of his sexual orientation. The father asked a Mississippi court for custody when he learned that his ex-wife's new husband's drinking and drug use led to frequent violent outbursts, endangering his son. Although the court recognized that the young boy was at risk, it denied the father's request for custody because his relationship with his male partner violated Mississippi's sodomy statute and therefore was considered "immoral."

"Lambda Legal got involved with the *Lawrence* case because we believed it was the first case that had the potential to cleanly present the legal backing for these kind of injustices to the U.S. Supreme Court," Ms. Logue said.

"We figured at the time, 'we can't make things worse' and I think everyone at Lambda Legal is overjoyed that if anything, many individual lives, like these, have been made better in real ways."

Indeed, Ms. Logue's successful advocacy as part of Lambda Legal will be honored by Chicago Mayor Richard M. Daley when she is inducted into the Chicago Gay and Lesbian Hall of Fame on October 21, 2003.

Ms. Logue said *Lawrence v. Texas* in many ways reminded her of her days at the Firm. "There are good partnerships and there are truly exceptional partnerships like the one between Lambda Legal and Jenner & Block. It was great to get back in touch with the spirit and dedication that is unique to the Firm."

Ms. Logue joined Jenner & Block after graduating from Northwestern University Law School in 1986. She left in 1990 to work for Business and Professional People for the Public Interest (BPI), and shortly thereafter joined Lambda Legal's Chicago office.

McGowan Takes on New Challenge at ACLU



Sharon M. McGowan, former Jenner & Block associate, left the Firm recently to undertake a new challenge as the William J.

Brennan First Amendment Fellow at the American Civil Liberties Union in New York City.

Ms. McGowan's significant work on the *Lawrence v. Texas* case, and her dedication to the LGBT Community make this move a natural professional decision. Ms. McGowan noted, "Almost every day I overhear someone from the

ACLU Lesbian and Gay Rights Project telling reporters, attorneys or concerned citizens that *Lawrence* marks the dawning of a new day, and I am so proud that Jenner & Block helped make that happen. As the new ACLU slogan says — now it's time to 'get busy — get equal!'"

Ms. McGowan is one of the co-authors of the forthcoming book, *The Rights of Lesbians, Gay Men, Bisexuals and Transgender People: The Authoritative ACLU Guide*, scheduled for release in January 2004.

In addition, she is the Chair of the Harvard Law School Gay, Lesbian, Bisexual and Transgender Alumni Caucus. In that role, she helped to

coordinate the first reunion of LGBT Alumni at Harvard Law School, held in Cambridge on September 19-20.

This event commemorated the 25th anniversary of the founding of the Committee on Gay and Lesbian Legal Issues, the student organization that is now known as HLS Lambda. The event brought together HLS LGBT alumni from all corners of the legal world. Some of the highlights included a panel discussion with LGBT judges, warm welcoming remarks from HLS Dean Elena Kagan, and a keynote address by Professor Bill Rubenstein of UCLA. "I am thrilled that Jenner & Block was one of a half dozen firms that sponsored the event," Ms. McGowan noted.

Vault Ranks Firm the National Leader for Diversity



#1 - Diversity for Gays and Lesbians

Vault, one of the most influential career guides in the legal industry, recently released its 2004 rankings in which Jenner & Block was ranked number one in the country, especially in areas pertaining to diversity and pro bono work. The Firm was ranked within the top ten in the nation in many critical areas.

For its 2004 rankings, Vault surveyed nearly 12,000 associates from 150 law firms around the country. Of these 150

firms, Jenner & Block was ranked #1 for diversity for gays and lesbians as well as for pro bono work.

"We are pleased to see that Vault has recognized the Firm's unwavering commitment to diversity in the workforce," said Robert L. Graham, Managing Partner of Jenner & Block.

Jenner & Block was also ranked #2 for Overall Diversity; #3 for Diversity for Women; #6 for Best in Region, Chicago; #9 for Diversity for Minorities and #10 for Best 20 Law Firms to Work For.

Jenner & Block Receives High Marks From HRC



Jenner & Block fared well in the recently released Human Rights Campaign's (HRC) 2003 Corporate Equality Index, rating a "86," the second tier below a rating of 100. The Firm was among only four law firms in the country listed and rated, and one of only two in Chicago.

According to the report, the 2003 HRC Corporate Equality Index rated companies on a scale of zero to 100 percent on seven factors, including "whether they have a written non-discrimination policy covering sexual orientation; have a written non-discrimination policy covering gender identity and/or expression; offer health insurance coverage to their employees' same-sex domestic partners; offer diversity training; have GLBT employee groups; engage in appropriate and respectful advertising to the GLBT community; provide financial contributions to GLBT community organizations; and decline to engage in any activities that would undermine the goal of equal rights for lesbian, gay, bisexual and transgender people."

Local Charity Feeds LGBT Homeless Youth

The National Network of Runaway and Youth Services estimates that approximately 30 percent of homeless youth in urban areas identify themselves as lesbian, gay or bisexual. Many of these youths were compelled to leave their former living situations due to family conflict over their sexual identity.



a community-supported kitchen

First Slice, a Chicago-based not-for-profit catering service, has responded to this segment of the

homeless population by providing food and other services to such youths. Jenner & Block Partners **E. Lynn Grayson, Gail H. Morse** and Associate **Margaret Simpson** have served as pro bono legal counsel to First Slice since 2002.

"Being homeless dramatically increases a person's risk for alcohol and drug abuse, violence, HIV, and a host of other ills," said Margaret Simpson. "First Slice, by providing simple nourishment, can act as a doorway for other support services to help young people get off the street and improve their lives."



AIDS Walk Washington

More than 25 people from Jenner & Block's Washington, DC office participated in the AIDS Walk Washington on October 4. All proceeds from the event benefited the Whitman-Walker Clinic, which provides a comprehensive array of medical and social support services to people living with HIV/AIDS in the Washington, DC metropolitan area. The Jenner & Block Team efforts raised over \$5,000.

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